

**TREMONTON CITY CORPORATION  
SPECIAL CITY COUNCIL MEETING  
April 8, 2014**

Members Present:

Diana Doutre  
Lyle Holmgren  
Jeff Reese  
Bret Rohde  
Roger Fridal, Mayor  
Shawn Warnke, City Manager  
Darlene S. Hess, Recorder

**SPECIAL CITY COUNCIL MEETING**

Mayor Fridal called the April 8, 2014 Special City Council Meeting to order at 6:00 p.m. The meeting was held in the Tremonton City Council Meeting Room at 102 South Tremont Street, Tremonton, Utah. Those in attendance were Mayor Fridal, Councilmembers Doutre, Holmgren, Reese, and Rohde, City Manager Shawn Warnke, Recorder Darlene S. Hess, City Attorney Dustin Ericson, Public Works Director Paul Fulgham, Police Chief David Nance, and Treasurer Sharri Oyler. Councilmember Byron Wood was excused.

Mayor Fridal welcomed all those who were in attendance including the following members of the City Staff: Sergeant Todd Hunsaker, Detective Andy Marchant, Officer Nick Nessen, Officer Zach Moore and Animal Control/Code Enforcement Officer Greg Horspool.

1. Approval of Agenda:

**Motion by Councilmember Doutre to approve the agenda of April 8, 2014.** Motion seconded by Councilmember Holmgren. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Rohde - aye. Motion approved.

A Hearing to consider revocation of a business license was called to order at 6:02 p.m. Thirty-eight people were in attendance.

2. Hearing:

- a. Wherein the City Council may formally consider the revocation of the business license of The Blue Sphynx pursuant to Title 9, Licensing, Control and Regulation of Business and Construction, Chapter 9-100 Licensing, Control and Regulation of Businesses, Part 9-120 Revocation or Denial of Business license, of the Revised Ordinances of Tremonton City

Attorney Dustin Ericson informed the Council of the process for a hearing regarding the revocation of a City business license. The City will be given an

opportunity to explain a lead statement of what the process is and why the City is recommending a revocation of a business license. If there is a representative from The Blue Sphynx, they will then be given an opportunity to make a statement as to why the business license should not be revoked.

At that point in time, the City will present evidence, via witnesses and documents, as to why the City Attorney's Office is recommending that the business license be revoked. A representative of The Blue Sphynx will have an opportunity to also ask questions of those witnesses and see those documents.

At that point in time, a representative of The Blue Sphynx will have the opportunity to call relevant witnesses who can attest to whether or not the allegations occurred as to why the City Attorney's Office is recommending that the business license be revoked. Both parties will then be given a chance to summarize what has been presented.

The time will then be turned back to Mayor Fridal to entertain a motion one way or another. This is the way the hearing will precede. Attorney Ericson informed the Council that Attorney Holdaway was here to represent The Blue Sphynx. He then gave Mr. Holdaway time to get his name on the recording.

Manager Warnke asked Mayor Fridal to have Attorney Ericson talk about the standard of review and other information that the Council should know. Attorney Ericson told the Council that in this situation, the Council should remain objective and listen to the evidence that is presented. The Council will have the right to ask questions of both sides as the information is presented; however, it would be best if they acted together as a Council. When the time comes for the Council to make a decision as to whether or not to revoke the license, the Council should be using a technique called a standard of review or a preponderance of the evidence which is in our Ordinance. If it were a "scale of balance", this just means that one side may be a little heavier than the other. Although this is not a scientific review, it is said that one side is 50.1% heavier than the other as to how you will base your decision.

Attorney Ericson stated that he would like to briefly let the Council know what the City of Tremonton will be describing today. Last Thursday two arrests were made at The Blue Sphynx, LLC located at 83 South Tremont Street. Those arrests were made based on the sale of illegal drugs taking place within the facility of The Blue Sphynx itself. Tremonton City Code 9-120 states when the City can revoke or deny a business license under subsection (1)(b) where it says that it is "Unlawful activities, by virtue of City or State laws, conducted or permitted on the premises where the business is conducted." Those arrests, again, were made based upon illegal activities that took place on the premises of that business license. That is the basis that the City Attorney's Office is recommending to the City Council that the business license for The Blue Sphynx, LLC be revoked at this time.

Attorney Ericson said that several documents will be used, and, also, Detective Andy Marchant of the Tremonton Police Department will be presenting evidence to the City Council this evening, from which the Council can base their decision.

Attorney Ericson turned the time over to any representatives from The Blue Sphynx.

Ryan Holdaway stated that he has been hired by Mr. Abel and The Blue Sphynx to represent him at the preceding; however, that representation is limited which was communicated to the City Attorney in the letter that was sent yesterday. Mr. Holdaway said he was present solely to object to the hearing on the due process grounds. He will not be addressing any of the underlying issues. Attorney Holdaway asked the Council if they would like him to express the objections now or wait until after the evidence has been presented. Mr. Holdaway said he was here to create a record of that.

Attorney Ericson responded and told Mr. Holdaway that it may run a little more succinctly if Mr. Holdaway presents his objects then if he wants to keep the option open to raise any other objections at the end it would be available. Mr. Holdaway said that he does not want to cross examine any witnesses at this time.

Attorney Holdaway stated that he had submitted to the City Attorney a document that was finalized in a Prehearing Memorandum and requested that a copy be forwarded on to the City Council if it has not been done. This will be called The Blue Sphynx Exhibit #1 and used to reference the points of law - specifically one that addresses the property rights. Although Attorney Holdaway does not think that is really an issue here, it is just like a lot of things, they need to build from one block to the next.

Attorney Holdaway stated that what this establishes is that Mr. Abel has a property right in the license and that there are some things that have to happen before that business license can be revoked. Attorney Holdaway said that there is a process that the City must provide. What is required is that the City must provide notice and an opportunity to be heard. The City carries the burden of proof and the City must provide substantial evidence supporting its claims. Attorney Holdaway said that this document intends to establish that fact.

Attorney Holdaway said that the one thing he wants to focus on is “due process”. He has done a few of these Revocation Hearings and, so far, it hasn’t been necessary to get this far into the due process, which is why it is not touched upon in that briefing. And so in that aspect, he will not have to make the whole argument; however, he will be discussing some cases. If the Council would like to see the cases being discussed, he has his copy which he will be happy to provide.

Attorney Holdaway told the Council that he wanted to start out with what due process is. Due process basically, at the very minimum, requires notice and an opportunity to be heard. The opportunity to be heard has to be meaningful. Attorney Holdaway said he would get to what that means in a minute, as well as what the notice requires.

There are two cases that are on point on this. The first one Attorney Holdaway referred to was *McFry vs Utah State Bar*, a Utah Supreme Court case in 2010. It takes language from a United State Supreme Court Case: *Malane vs Central Hanover Bank and Trust Company*. This will be the principle that we will be operating on today. The first part of that is due process is not a technical concept that can be reduced to a formula with a fixed content unrelated to time, place, and circumstances; rather the demand the due process rests on the concept of basic fairness procedures and demand a procedure appropriate to the case and just to the parties involved.

Attorney Holdaway stated that the reason he brings these cases up is because what he and his clients are objecting to is both the time-frame that has been allowed for notice, and the quantitative information that was provided in the notice or as we alleged not really provided in the notice.

Attorney Holdaway then questioned what does the notice have to have? He referenced a case, *Anderson vs Public Service Commission*, another Utah Supreme Court Case of 1992. In that case, the Supreme Court upheld that in due process notice must be reasonably calculated under all the circumstances to give interested parties an opportunity to protect their interests.

Attorney Holdaway said that more clarification is given in the final case he would reference is *Staker vs. Sunset City*, a Utah Court of Appeals case in 2009, and contains language which helps tear this down to what this means: “The due process is flexible as being based on the conscience of fairness should afford the procedural protection which the given situation demands. Despite the flexibility of administrative hearings, there remains the necessity of preserving fundamental requirements of procedural fairness in administrative hearings. Due process, at a minimum, requires timely notice and an opportunity for a hearing appropriate to the nature of the case. For a notice to satisfy the due process requirements, it must be reasonably calculated under all circumstances to provide interested parties with a pendency of the actions and afford them an opportunity to present their objections in a reasonable time to make their appearance.”

Attorney Holdaway told the Council that this is the key point he wanted to focus on. The above referenced case closes with this comment: “Without proper notice and adequate time to prepare for the hearing, the statutory right to council, and to confront witnesses are meaningless.” Attorney Holdaway added that that undercuts the fact that due process requires that the hearing be meaningful. It has to be a meaningful opportunity to be heard and the fact that he, Attorney

Holdaway, has the right to cross-examine people today, plus the fact that he has the right to submit evidence, is meaningless unless he has had an adequate amount of time to prepare for this hearing; which means that due process is not being served.

Attorney Holdaway turned to the specifics of this case. He told the Council that he has an affidavit from John Abel (as shown in The Blue Sphynx Exhibit 2) as to Mr. Abel's perspective and believe as to what transpired. Notice was served on Mr. Abel and The Blue Sphynx on April 3<sup>rd</sup>, five days ago including the weekend. After being served and given the affidavit, he was shown the paper and given a few minutes to look at it then arrested, handcuffed, and taken away. What happened to the paper from that point forward, Mr. Abel doesn't know. He doesn't know where it is. He can't find it. Attorney Holdaway said that he has never seen that paper until it was shown on the screen here, tonight. That becomes problematic.

Friday, Mr. Abel managed to be released or bailed out; Attorney Holdaway was not sure which. On Friday, Mr. Abel began looking for legal representation. He contacted Pitcher & Holdaway, our office; however, we do not start working on a case until we receive a retainer.

Our offices are closed Saturday and Sunday; therefore, it was on the morning of April 7, 2014 that a retainer was made. Attorney Holdaway told the Council that his office made efforts to contact the City of Tremonton and the City Attorney in order to move the hearing so there would be time to prepare to represent Mr. Abel. Tremonton City Attorney, Dustin Ericson, was in court throughout the day and did not respond to our request for a continuance other than to say he would look into it.

Attorney Holdaway told the Council that his request for a continuance was denied this morning. He had to drop everything, at the inconvenience of his clients, to be here tonight. Mr. Holdaway told the Council that he did not think that this in any sense of the word qualifies as adequate time to prepare for the hearing. We do not know what evidence is being presented or witnesses that will be presented. I cannot expect to prepare for cross examination of witnesses when I do not know what evidence or subject matter is being presented. Based on this matter that it will be a violation of the due process of The Blue Sphynx and Mr. Abel, Mr. Holdaway told the Council that what he was asking is to conclude the hearing and reschedule for another time that will give adequate time to prepare for the hearing.

Councilmember Doutre asked Mr. Holdaway what he thought would be adequate time? Mr. Holdaway told the Council that generally speaking it would be fourteen days from the date he gets a subpoena served on them. He had to anticipate that he would have an argument and would need at least fourteen days after he has reviewed the material. It will depend on how many days it will take

for him to get the documentation. He can usually get any witnesses he subpoenas within about 48 hours after it is decided to subpoena them.

Mr. Holdaway asked if there were any questions from the Council. Being none, he was finished with his comments.

Attorney Dustin Ericson asked the Mayor if he could comment on the points presented by Attorney Holdaway. As to the notice, today Detective Andy Marchant will present very clearly that notice was provided to Mr. Abel on Thursday, April 3rd. It is also very clear that we will present to the Council that Mr. Abel from his Facebook and other media postings was very aware of the hearing tonight. The notice that we will put on exhibit to the Council is very clear that the basis for the Revocation Hearing is the selling of illegal drugs that may have taken place at his business.

As to the timeframe of that notice, as Mr. Holdaway indicated in Mr. Abel's affidavit, I was in Court all day, as well, but I had time sufficient time to prepare for this hearing today.

If it is alright with the Council, Attorney Ericson said he would like to call Detective Andy Marchant to come forward.

Detective Marchant gave his full name as Andrew Alan Marchant and told the Council that he is currently employed by the Tremonton City Police Department as an Investigator. Attorney Ericson asked Detective Marchant if he was involved in an arrest on April 3<sup>rd</sup> of 2014 that took place at The Blue Sphynx LLC and what his capacity was. Detective Marchant replied that he was present in the capacity of an assisting officer to the Narcotics Strike Force.

Attorney Ericson handed Detective Marchant what will go into the Record as Exhibit #1 and asked him if he was familiar with this document. Detective Marchant replied that he was and that the document is a notice from the City that was given to John Abel telling him that there was an intention to revoke his business license. Attorney Ericson asked if the document was in fact given to Mr. Abel. Detective Marchant replied that it was, at the time of the arrest. At Mr. Abel's request, Detective Marchant put the document in Mr. Abel's pocket because Mr. Abel was handcuffed.

Detective Marchant stated that he informed Mr. Abel that the document was a notice from the City to revoke his business license, and that there would be a hearing held today (April 8, 2014) at 6:00 p.m.

Attorney Ericson asked Detective Marchant why Mr. Abel was arrested. Detective Marchant replied that Mr. Abel was arrested on a warrants obtained by the Strike Force for the distribution of a controlled substance. Attorney Ericson

asked if Mr. Abel was given a copy of those arrest warrants. Detective Marchant was not sure.

Detective Marchant stated the arrest warrants detailed the charges and stated that Mr. Abel was under arrest.

Attorney Ericson handed Detective Marchant what had been marked as Exhibit #2 for tonight's purposes and asked if he was familiar with this document. Detective Marchant replied that he was and that the document showed printouts from The Blue Sphynx Facebook page. Attorney Ericson referred specifically to Page 7, the right hand side, middle column, the posting from April 4, 2014 and asked Detective Marchant what that posting said. Detective Marchant replied that the posting says, "City Hall the 8<sup>th</sup> at 6:00 p.m. We need your help." The posting was made by The Blue Sphynx Smoke Shop.

Attorney Ericson asked Detective Marchant what the date was for the allegation of drug charges. Detective Marchant replied that the Strike Force had been conducting an investigation after the Tremonton Police Department was advised that The Blue Sphynx was selling illegal drugs from the business.

Attorney Ericson asked how specifically that investigation was conducted. Detective Marchant responded that it was conducted to the point where the Strike Force purchased illegal or controlled substances from the business. Attorney Ericson asked if those purchases took place in the business and was told by Detective Marchant that they did. Attorney Ericson then asked if there was an audio of the purchases. Detective Marchant confirmed that there was an audio which was relayed to the Strike Force agent outside the building.

Attorney Ericson asked if illegal drugs were purchased and from whom they were purchased. Detective Marchant replied that illegal drugs were purchased from Mr. Abel and the other individual in this room. Attorney Ericson asked on how many occasions illegal drugs were purchased from Mr. Abel. Detective Marchant responded that illegal drugs were purchased three times from Mr. Abel and one time from Mr. Hodges. All of those purchases took place within The Blue Sphynx located directly across Tremont Street from the Tremonton Civic Center. Detective Marchant was not sure of the address, but confirmed that the business is located in Tremonton proper.

Attorney Ericson handed Detective Marchant what has been marked for tonight's purposes as Exhibit #3 and asked Detective Marchant if he was familiar with that document. Detective Marchant replied that he was and that the document is the arrest warrant for Mr. Abel and the arrest warrant for Mr. Hodges as well. Attorney Ericson asked if the arrest warrants were signed and by whom. Detective Marchant stated that the arrest warrants he observed were signed by the Judge. Attorney Ericson asked what the basis is for a Judge signing an arrest warrant. Detective Marchant stated that probable cause is the basis for a Judge signing an

arrest warrant. Attorney Ericson asked if probable cause is a greater standard than preponderance of the evidence. Detective Marchant stated that it is. Attorney Ericson asked what would be required of the Judge when he signed the arrest warrants. Detective Marchant stated that there would have to be some evidence indicating that more than likely what was being alleged had occurred. To review, Attorney Ericson asked if the arrest warrants were signed and were signed by a Judge. Detective Marchant stated that they were.

Attorney Ericson asked if subsequent to the arrest warrants being signed was there additional information received from the arresting officers, specifically concerning illegal weapons. Detective Marchant stated that information was obtained after the arrests. Attorney Ericson asked how the information was obtained. Detective Marchant stated that information was obtained in an interview from a person that was arrested. Attorney Ericson asked about the outcome of that interview. Detective Marchant stated that he wrote a search warrant for The Blue Sphynx and a weapon was retrieved from the site. Attorney Ericson asked what type of weapon was retrieved and where it was secured from. Detective Marchant stated that a .45 caliber pistol was retrieved in the office of The Blue Sphynx.

Attorney Ericson asked if Mr. Abel has a criminal background. Detective Marchant stated that he does. Attorney Ericson asked if Mr. Abel is a felon. Detective Marchant stated that he is. Attorney Ericson asked if, as a felon, Mr. Abel is able to possess a firearm. Detective Marchant stated that he is not. Attorney Ericson asked if that would make the firearm retrieved illegal. Detective Marchant stated that it is. Attorney Ericson asked if there were magazines associated with that firearm. Detective Marchant stated that there were. Attorney Ericson asked if the magazines were loaded and where they were located. Detective Marchant stated that one of them was [loaded] and it was located in the case right next to the gun. Attorney Ericson stated that he had no additional questions for Detective Marchant and asked if anyone on the Council had questions for him. There were no questions from the Council. Attorney Ericson asked Mr. Holdaway if he had any questions. Mr. Holdaway stated that he cannot [ask questions] as he objected to the proceedings.

Attorney Ericson stated that at this time he is going to enter in [to evidence] Exhibit #4, which is a copy of the Tremonton City Title 9 Ordinance, wherein under 9-120 it says that revocation or denial of a business license may be done by the City Council for unlawful activities by virtue of City or State laws conducted or permitted on the premises where the business is conducted. Additionally being submitted to the City Recorder is a copy of The Blue Sphynx business license, marked as Exhibit #5 to remain with the record from these proceedings.

Attorney Ericson stated that in closing, it is his recommendation to the Council that for purposes of revocation of the business license for The Blue Sphynx, that the City Council revokes that license. Sufficient notice was provided regarding not only the time and place of the hearing as is evidenced by everybody who is



here today, but also the basis for the revocation of the license being the sale of illegal drugs within the place of business was in that notice provided to Mr. Abel on April 3<sup>rd</sup>. From a criminal standpoint, it is assumed that the State of Utah will be conducting additional hearings and evidence regarding Mr. Abel personally selling drugs on the premises, but for the City's purpose here tonight it doesn't matter who sold drugs on the premises, just that drugs were being sold on the premises because it is an illegal activity that took place within The Blue Sphynx within their property. Additionally, the fact that there was an illegal weapon in The Blue Sphynx further indicates that unlawful or illegal activity was taking place there. Based on this, based on the evidence that Detective Marchant provided, and the documents that have been given to the City Recorder, it is a recommendation from the City Attorney's Office that the City Council vote to revoke the business license of The Blue Sphynx.

Mayor Fridal asked if the Councilmembers have any questions. City Councilmember Holmgren asked if there have been any other instances where the City has revoked a business license in Tremonton. Attorney Ericson stated that to his knowledge, there has not been. There have been business license applications that have been denied, but to his knowledge there has never been one that has been revoked.

City Councilmember Dautre stated that her only concern is that Mr. Abel's legal counsel has not had the time to prepare. Attorney Ericson stated that the City Attorney's Office prepared for the hearing today as well, additionally, it is unknown how much preparation could overcome the fact that illegal drugs and illegal weapons were obtained from The Blue Sphynx. City Councilmember Dautre stated that Mr. Abel's legal counsel wasn't able to ask questions. Attorney Ericson stated that the purpose of this hearing tonight was to ask questions and that Mr. Holdaway spoke very poignantly regarding due process and that's what tonight is, it was Mr. Abel's opportunity to be heard. This was his due process. Regardless of when Mr. Abel would have been served with the notice, if he failed to retain legal counsel until that eve, legal counsel would, at that point and time, only have one day to prepare for the hearing. That is the City Attorney's position and recommendation. Certainly the City Council has the right to consider those things.

Attorney Ericson also stated that the Council has the right to table it for a later date and can meet again; recognizing that during that timeframe the business remains open. The affidavits show that part of the basis [for which] the Judge signed those arrest warrants was the fear of ongoing illegal activity occurring as Mr. Abel has a history of that as does The Blue Sphynx.

Councilmember Rohde said that his concern is the illegal activity. He added that he doesn't mind giving Mr. Abel's counsel some time to prepare, but we don't want illegal activities of that kind of thing taking place any longer either.

Councilmember Rohde told the Council that he did not know how you control that.

Councilmember Holmgren stated that he had to agree with what Councilmember Rohde stated. He may view this a little differently, but here we have some rather serious allegations that certainly do not fit with what he perceives as a business in Tremonton. He has a hard time with extending the time with the allegations. They could continue to distribute marijuana and distribution of marijuana in Tremonton. This is his concern.

Councilmember Reese asked if what is being talked about here is closing The Blue Sphynx until everything else has been decided. Attorney Ericson responded that a revocation is the end of that business license. It would not preclude The Blue Sphynx from applying for a new business license at a later date or whatever time and date that they so choose.

The Hearing closed at 6:30 p.m.

3. Discussion and consideration of revoking the business license of The Blue Sphynx based upon preponderance of the evidence and pursuant to Title 9, Licensing, Control and Regulation of Business and Construction, Chapter 9-100 Licensing, Control and Regulation of Businesses, Part 9-120 Revocation or Denial of Business license, of the Revised Ordinances of Tremonton City

Mayor Fridal asked if anyone would like to make a motion.

Councilmember Rohde stated that he wished there was a way to go through due process but there isn't because there is the possibility that they could continue to conduct the illegal activity. Attorney Ericson stated that, to that point, his position would be that the City has given due process. Due Process was the notice that was served on Mr. Abel on April 3<sup>rd</sup> giving him an indication of this hearing, telling him what the allegations were: that there was illegal distribution of drugs occurring at his place of business. Attorney Ericson told the City Council to bear in mind that when Mr. Abel was being arrested with an arrest warrant charging him with these exact crimes that is the basis for the City revocation of the license. The notice was given to him as well. Mr. Abel was made very well aware of what the charges were against him. He had to be and that is why the Judge signed off on it.

Mayor Fridal stated that he would entertain a motion from the Council.

Attorney Holdaway said he would like to address those concerns briefly. Attorney Holdaway stated that when a person is released out of custody generally speaking what should have taken place is that there is a consideration made by the Court not only as to flight risk but as to the safety of the public in allowing for that individual to be free while awaiting their trial process to move forward. To the extent that the Court has taken action to allow that person, at least some degree by the Court, to be out on his own

recognizances. Furthermore, Mr. Abel will be on probation and I am sure his probation officer knows what is going on. Attorney Holdaway stated that he assumes that the probation Officer will have a high degree of oversight over the conduct and activities of Mr. Abel given the nature and the scope of the charges and allegations against him. So, to that extent for the time period we are asking for, Attorney Holdaway does not think their will be a continuance of that kind of activity.

Mayor Fridal thanked Attorney Holdaway for his comments and again turned to the Council.

Councilmember Rohde commented that when he was pulling in tonight that there was a lot of cleaning up at the shop. Was that sales? Attorney Holdaway replied that Mr. Abel is selling inventory from his shop in anticipation of the outcome of tonight. However to be fair and in the interest of candor, he plans to file a petition tonight. Councilmember Doutre asked what that means and Attorney Holdaway responded that it is when they ask the Court to review the Council's position on action taken tonight. In essence, we will be suing the City for the action taken.

Recorder Hess asked Mr. Holdaway to speak in the microphone as he is not being picked up.

Attorney Ericson asked to address the previous comment by Mr. Holdaway. Suing the City is not the correct term. They would be appealing the decision made by the City Council today, which is within their right and which has been anticipated by the City Attorney's Office. There would be a likely appeal made if the City Council made a decision to revoke the license. The City Attorney's Office would move forward under that assumption that there would be an appeal to the decision made.

**Based upon the information provided by the City Attorney and everything he has studied, Councilmember Reese moved to revoke the [business] license of The Blue Sphynx.** Motion seconded by Councilmember Holmgren. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Rohde - aye. Motion approved.

Attorney Holdaway told the Council that there was one more thing. He is obligated to ask the Council if the City would give a voluntary stay of action until the Court is asked to review a petition. Mayor Fridal said that he did not know and deferred the question to Attorney Ericson. Attorney Ericson told the Council that what this means is that the Council would put a stay on the decision to revoke the license until such time as the Court reviews this hearing tonight. This would mean that the business stays open during that time. Attorney Ericson added that it would be correct for the Council to entertain a motion regarding the request made by Attorney Holdaway.

**Motion** by Councilmember Holmgren to not stay the proceedings. Second by Councilmember Rohde. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Rohde - aye. Motion approved.

4. Discussion and consideration of adopting Ordinance No. 14-07 amending Title 9 Licensing, Control, and Regulation of Business and Construction, Chapter 400 Licensing and Regulating Specific Businesses, creating Part 9-490 Regulating the Retail Sales of Tobacco and Tobacco Paraphernalia in Non-Tobacco Specialty Businesses and/or Stores.

Manager Warnke explained that the City has two Ordinances which deal with tobacco sales. The first one is a specific business that is called a Tobacco Specialty Shop. The City Ordinance allows a Tobacco Specialty Shop within a Commercial Highway Zone. The State Code defines a Tobacco Specialty Shop as a shop that has gross tobacco sales over 35%. There are other businesses that sell tobacco, but their gross tobacco sales do not exceed 35%. What is before the Council tonight is an Ordinance that would regulate those kinds of businesses that sell tobacco but are not Tobacco Specialty Shops.

What the Draft Ordinance says is that, to have a business that sells tobacco products, they must apply for a Tobacco Sales Business License. In order to do so, they have to meet certain requirements such as that the business that is applying for the Tobacco Sales Business License is engaged in the sale of food and beverage and is located in a building that is 10,000 square feet or larger.

Another type of business that would be applicable and eligible for this Tobacco Sales Business License would be a business that is engaged in the sale of gasoline and diesel fuel and is located in a building that is larger than 2,000 square feet. The third type of business carries a business tag that primarily sells pharmaceutical under Utah Code and is located in a building that is larger than 10,000 square feet.

There is also an exception in the Draft Ordinance for those businesses that have a license today that is lawfully selling Tobacco Products and Tobacco Paraphernalia under the license.

Councilmember Dautre asked how many businesses like this we have in the City. Manager Warnke said he wasn't sure as the City has never regulated those businesses, but the catch all and to hold people harmless is that fourth standard which is that they are selling tobacco products under a license as of April 8th.

Councilmember Holmgren told the Council that Park City is concerned about this issue. He was not sure if there are some pharmacies in Tremonton that do not meet that square footage requirement. Councilmember Holmgren commented that as Manager Warnke stated, part (d) takes care of that issue as long as they renew their business license annually.

Manager Warnke recommended to the Council that they call out the effective date of the Ordinance as being April 8, 2014. This clearly states that anyone who has a business license up to the time you adopt the Ordinance will be eligible for continuing that business license. Councilmember Holmgren commented that the business license is not transferrable so, if the business is sold, at least that stops the practice. Manager Warnke

suggested that it be clarified that today, April 8, 2014, the City is adopting an Ordinance and anyone who has a business license effective prior to the adoption of the Ordinance would be grandfathered in.

Councilmember Rohde said that he is trying to understand the whole reason for introducing this Ordinance. Manager Warnke replied that in the meeting tonight, the City just entertained a hearing involving the sale of an illegal from a business. The business selling the illegal substance was actually a Smoke Shop. One could argue that they are not a Smoke Shop, that the 35% sales threshold in the State Code isn't met. The staff recommends and believes that there is a reason to start to regulate the sale of tobacco and that is what this Ordinance will do. The State already regulates the sale of tobacco and in the sense that it created a State Law which describes the place and manner in which tobacco can be sold for Smoke Shops. For example, there are business requirements associated with tobacco specialty type shops, but this is an added regulation for those who don't meet the standards of a tobacco specialty shop as identified in the State Code. This Ordinance will allow the City to regulate.

Councilmember Doutre commented to Councilmember Rohde that she learned when she first came in as a Councilmember that there are regulations for alcohol as related to distances and this is kind of the same thing. Businesses of this type cannot be located too close to school, churches, parks, etc.

Councilmember Rohde stated that he just wanted to make sure that a business has the right to exist as long as it is within the zoned area. Councilmember Holmgren said that the Council doesn't want to threaten businesses; however, he thinks that this ordinance covers those areas. Councilmember Holmgren told the Council that his only concern is the 10,000 square feet.

Councilmember Reese told the Council that if there was a concern, they could table the Ordinance. Councilmember Holmgren told the Council that he did not think there was a great concern. The Ordinance covers the concerns he has.

**Motion by Councilmember Doutre to adopt Ordinance No. 14-07 amending Title 9 Licensing, Control, and Regulation of Business and Construction, Chapter 400 Licensing and Regulating Specific Businesses, creating Part 9-490 Regulating the Retail Sales of Tobacco Products and Tobacco Paraphernalia in Non-Tobacco Specialty Businesses and/or Stores with [an effective date of] April 8, 2014. Motion seconded by Councilmember Holmgren.**

Manager Warnke added as a point of clarification that what he is recommending is that in Section 9-493, (1)(d) "A business license for any business that was lawfully selling Tobacco Products and Tobacco Paraphernalia under that license prior to April 8, 2014," that it be made clear that it is a valid business license prior to the City Council adopting this Ordinance. **Councilmember Doutre amended the Motion to include that a business license prior to the City Council adopting this Ordinance is valid.** Roll Call Vote: Councilmember Doutre - yes, Councilmember Holmgren - yes, Councilmember

Reese - yes, and Councilmember Rohde - yes. Motion carried.

5. Adjournment.

**Motion by Councilmember Reese to adjourn the meeting.** Motion seconded by Councilmember Holmgren. Vote: Councilmember Dautre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Rohde - aye. Motion carried.

The meeting adjourned at 6:51 p.m.

The undersigned duly acting and appointed Recorder for Tremonton City Corporation hereby certifies that the foregoing is a true and correct copy of the minutes for the City Council Meeting held on the above referenced date. Minutes were prepared by Norene Rawlings, Cynthia Nelson and Linsey Nessen.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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Darlene S. Hess, Recorder